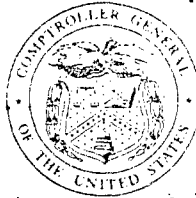


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Liability of Panama Canal Commission for Certain Claims and Authority to Settle]

FILE: B-197052

DATE: April 22, 1980

MATTER OF: Panama Canal Commission Liability and
Settlement Authority on Claims

DIGEST: The Panama Canal Commission, successor
agency to the Canal Zone Government and the
Panama Canal Company, may assume liability
for those claims that arose against both the
Government and the Company prior to the ef-
fective date of the Panama Canal Treaty of 1977.
The Commission also has settlement authority
to adjust claims arising against the Government
and the Company, if such authority had existed
with those latter agencies. See Panama Canal
Act of 1979, Pub. L. 96-70. Any claim arising
against the Commission after October 1, 1979,
must be administered pursuant to chapter 4 of
Pub. L. 96-70.

*AGC 003184
DLG 01724*

DLG 00944

The Panama Canal Act of 1979

The Administrator of the Panama Canal Commission requests our
opinion on the Commission's liability for certain claims and its autho-
rity to settle and pay such claims. These issues have arisen as a result
of the operation of the Panama Canal Treaty of 1977 and its resulting
implementing legislation, the Panama Canal Act of 1979, Public Law
No. 96-70, 93 Stat. 452 (1972).

On October 1, 1979, the date that the Panama Canal Treaty of 1977
entered into force, the Panama Canal Act of 1979, supra, also went into
effect. This statute established a new United States Government agency
called the Panama Canal Commission (Commission) which is to manage,
operate, and maintain the Panama Canal for the life of the Treaty. The
Commission replaced two entities that had previously operated the Pana-
ma Canal and the Panama Canal Zone, the Panama Canal Company, (Com-
pany), a corporate instrumentality of the United States which maintained
and operated the canal, and the Canal Zone Government, an independent
agency of the United States which performed the various duties connected
with the civil government of the Canal Zone. Both were dissolved on
October 1, 1979, by section 3303(a) of the implementing Act. Pub. L. No.
96-70, 93 Stat. 499.

This has resulted in confusion concerning the Commission's liability
for, and authority to settle and pay claims presented to the Company and

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to the Canal Zone Government but not disposed of by those agencies prior to their dissolution on October 1, 1979. The Administrator of the Commission seeks timely disposition of claims which arose before October 1, 1979, and has identified those categories of pre-existing claims which he considers the Commission would be liable for, and would have the authority to settle and to pay. He also discusses claims arising after October 1, 1979, which he believes the Commission is authorized to settle and pay. The Administrator requests our opinion on the propriety of his proposed disposition of these claims. We will discuss separately the Commission's responsibility with regard to claims against the Canal Zone Government, claims arising against the Company, and claims arising on or after October 1, 1979.

A. Claims Against The Canal Zone Government

The Canal Zone Government was established as an appropriated fund agency of the United States by the Act of September 26, 1950, 64 Stat. 1038. From July 1, 1951 until its dissolution on October 1, 1979, the agency was administered by a Governor of the Canal Zone and performed duties connected with civil government, including health, sanitation and protection, in the Canal Zone. The Government was subject to claims and to suits for civil wrongs caused in the Canal Zone by the negligence of its employees, pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b) (1976). With regard to activities of the Canal Zone Government not cognizable under the Tort Claims Act -- for example those occurring outside the Canal Zone and within the jurisdiction of the Republic of Panama -- the Governor was authorized to pay claims for property damage or loss and for personal injury and death arising therefrom, pursuant to section 271 of title 2 of the Canal Zone Code. While the Government was an appropriated fund agency, the Panama Canal Company was required to reimburse the Treasury for the net cost of operations of the Government, including amounts paid by the Government in settlement of claims. 2 C.Z.C. § 62(g)(2).

The Administrator proposes that the Commission assume liability for claims against the Canal Zone Government under title 2 of the Canal Zone Code and under any other provision of law. We agree with this proposal.

While section 3303 of the Panama Canal Act of 1979, *supra*, repeals title 2 of the Canal Zone Code, we agree with the Administrator that the general saving statute, 1 U.S.C. § 109 (1976), would operate to save any liability of the Canal Zone Government already incurred under prior law. 1 U.S.C. § 109 states in pertinent part:

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability

incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability. ***"

The Supreme Court has held that this statute preserved not only a cause of action but also the jurisdiction of a U.S. District Court to hear an action brought in admiralty by a claimant under the War Risk Insurance Act, notwithstanding the repeal of that Act after the case was filed. De la Rama S.S. Co. v. United States, 344 U.S. 386, 389 (1953); see also Lynch v. United States, 292 U.S. 571 (1933); Gardner v. Panama R.R. Co., 342 U.S. 29 (1951); Sands, Sutherland, Statutory Construction § 23.37 (4th ed. 1972). We therefore would have no objection to the Commission assuming responsibility for claims filed prior to October 1, 1979 against the Canal Zone Government under title 2 of the Canal Zone Code.

We also have no objection to the Commission assuming responsibility for existing non-title 2 claims against the Canal Zone Government. (The general saving statute, supra, does not work to preserve non-title 2 claims because its effect only extends to liabilities based on repealed statutes and, other than title 2, the Panama Canal Act of 1979 does not repeal any statutes on which claims against the Government would have been based.) The implementing legislation, Public Law No. 96-70, supra, does not expressly provide for the assumption by the United States of the assets and liabilities of the Canal Zone Government (as it does for the Company, see infra). However, the House Report accompanying it indicates that such a provision was considered unnecessary because the Canal Zone Government never had an existence separate from that of the United States "insofar as concerns property and other assets administered by the [Canal Zone Government]." H.R. Rep. No. 96-98, Part I, 70 (1979). In view of this, authority to assume the liabilities (as well as the assets) of the Panama Canal Zone Government can be logically inferred. Section 1301 of Public Law 96-70, settles this question by authorizing the Commission to settle and pay from its appropriations claims against the Canal Zone Government:

"On the effective date of this Act, any unexpended balances of the appropriation accounts appearing on the books of the United States Government as 'Operating Expenses, Canal Zone Government (38-0116-0-1-806)' and 'Capital Outlay, Canal Zone Government (38-0118-0-1-806)' shall be covered into the general fund of the Treasury, and any appropriations to which expenditures under such accounts have been chargeable before such effective date are repealed. The Commission may, to such extent or in such amounts as are provided in appropriation Acts to the Commission for such purpose, pay

claims or make payments chargeable to such accounts, upon proper audit of such claims or payments. There are authorized to be appropriated to the Commission such funds as may be necessary to pay claims and make payments pursuant to this section." 93 Stat. 477, emphasis added.

The House Report says with regard to this section (numbered as section 231 of H.R. 111, the House version of the bill, but otherwise essentially identical to section 1301) that it "authorizes appropriations to the Panama Canal Commission for payment of claims chargeable to the discontinued accounts." H.R. Rep. No. 96-98, supra 60.

Based on this authority, we would have no objection to the Commission's proposal to assume responsibility for claims against the Canal Zone Government which arose before October 1, 1979.

B. Claims Against the Panama Canal Company

The Panama Canal Company was a wholly owned Government corporation which maintained and operated the Panama Canal and conducted the business operations incident thereto and incident to the civil government of the Canal Zone. Unlike the Canal Zone Government, the Company was specifically excluded from the Federal Tort Claims Act by 28 U.S.C. § 2680(m) (1976) and was subject to suit in its corporate name under 2 C.Z.C. § 65(a)(3). Because of the nature of the Company's operations, Congress enacted special rules governing the Company's liability on claims for damages arising out of vessel accidents occurring in the course of operation of the Canal. These rules were set forth in title 2 of the Canal Zone Code, sections 291-296. The Administrator proposes that the Commission assume responsibility for all claims against the Company (both title 2 and non-title 2 claims) which arose before October 1, 1979.

With regard to claims against the Company arising under title 2 of the Canal Zone Code (2 C.Z.C. §§ 291-296), the Administrator states that the Commission would be liable for those claims by virtue of 1 U.S.C. § 109, supra. We have no objection to this proposal, based on the same considerations set forth in our approval of the Commission's assumption of title 2 claims against the Canal Zone Government.

We are also in accord with the Administrator's rationale for assuming liability for those claims arising against the Company which are not covered under title 2 of the Canal Zone Code, such as, for example, claims not arising from canal operations or based on contract rather than tort. Section 1501 of Public Law 95-70 clearly provides that the United States shall assume the outstanding liabilities of the Company, which we believe would include all non-title 2 claims, as well as those under title 2.

C. Settlement and Payment by the Commission of Claims Against the
Predecessor Agencies

We have no objection to the Commission settling and paying outstanding claims against the Company or the Government. With respect to claims against the Government, this authority may be found expressly in section 1301 of Public Law 96-70, supra.

Public Law 96-70 does not expressly grant such authority with respect to claims against the Company. Specifically, the Commission says it can settle and pay claims against the Company for:

"(a) injury to, or loss of, property or for personal injury or death, arising from the operation of the Canal or related facilities or appurtenances; and

"(b) injuries to vessels or to their cargo, crew, or passengers, which occur in the Panama Canal (including the locks) and waters adjacent thereto."

Essentially, these are what we have referred to above as title 2 claims.

The Commission cites, as its authority for payment of these claims against the Company, sections 1401 and 1415 of Public Law 96-70, saying that by these provisions "the statute continues for the Commission the Company's authority (under 2 C.Z.C. §§ 65 and 295) to settle and pay such claims." We agree that these claims may be settled and paid by the Commission, pursuant to its settlement authority in chapter 4 of Public Law 96-70. As discussed below, claims under section 1412 for vessel damage outside the locks which exceed the \$120,000 limit on the Commission's settlement authority are to be referred to the Congress with a recommendation, and the Commission's authority to settle claims arising from Canal operation generally is limited by section 1401(b) to \$50,000.

The Commission suggests that it cannot settle and pay non-title 2 claims against the Company which arose before October 1, 1979, and that under 28 U.S.C. § 2414, the Attorney General has authority to settle such claims.

Section 2414 of title 28 does not give the Attorney General authority to settle claims against other agencies of the United States. Rather, it permits the Attorney General to compromise litigation or threatened litigation, and to use the so-called judgment appropriation, 31 U.S.C. § 724a, to pay compromise settlements. While the litigation may arise from a claim, the Attorney General's compromise authority is not dependent on the merits of the claim but rather on his role as lawyer for the executive branch. We must look elsewhere than to the Attorney General for authority to settle non-title 2 claims administratively against the

Company which arose before October 1, 1979. (Of course, both title 2 and non-title 2 claims which arose before October 1, 1979, and which have been referred to the Attorney General for litigation, presumably because the Company denied them or offered less than the claimants were willing to accept, may be settled by the Attorney General under 28 U.S.C. § 2414.)

Generally, this Office has authority to settle and adjust claims against the United States. 31 U.S.C. § 71. The Panama Canal Company, however, had authority to sue and be sued and to determine the character of and necessity for its expenditures and the manner in which they would be allowed and paid. 2 C.Z.C. § 65(a). We have construed such language in a Government corporation's organic legislation as permitting it to settle and pay claims against it independent of 31 U.S.C. § 71. In view of the mandate in section 1501 of Public Law 96-70 for the United States to assume the Company's outstanding liabilities and of the Commission's role as successor to the Panama Canal Company Fund (section 1302(a)), which would have been available for payment by the Company of non-title 2 claims against it, we believe the Commission is empowered to settle and pay non-title 2 claims against the Company which arose before October 1, 1979, in the same manner and on the same terms as the Company would have settled and paid them.

D. Claims Against the Commission Arising After October 1, 1979

The Administrator also requests our opinion on the Commission's proposed disposition of claims arising against the Commission after October 1, 1979. Public Law 96-70 sets forth the Commission's exposure to liability and its settlement authority of such claims. The Administrator gives the following summary of the Commission's responsibility for claims arising under the new Act:

"(a) Section 1401 authorizes the Commission to adjust and pay claims for property damage and loss and for personal injury or death arising from the operation of the waterway, up to a maximum of \$50,000 per claim. The section also provides that, with the exception of claims for vessel damage sustained in the locks, no action for damages on claims for property damage or loss or personal injury or death will lie against the Commission or the United States. Finally, the section provides that the Tort Claims Act is inapplicable to claims cognizable under this chapter of law.

"(b) Section 1411 continues for the Commission the same rules of liability for vessel damage sustained in the locks as existed for the Company.

"(c) Section 1412 does the same with respect to vessel damage sustained outside the locks, but limits the

claims which the Commission may adjust and pay under that provision to those not exceeding \$120,000.

"(d) Section 1413 and 1414 retain virtually the same listings of payable and unpayable items of damage as existed under prior law.

"(e) Section 1415 authorizes the Commission to adjust and determine the amounts due vessel-accident claimants except in the following cases:

'The Commission shall not adjust and pay any claim for damages for injuries arising by reason of the presence of the vessel in the Panama Canal or adjacent waters outside the locks where the amount of the claim exceeds \$120,000 but shall submit the claim to the Congress in a special report containing the material facts and the recommendation of the Commission thereon.'

"(f) Section 1416 provides for judicial review (by the U.S. District Court for the Eastern District of Louisiana) of awards by the Commission only in the case of vessel damage sustained in the locks of the Canal." (Footnote omitted.)

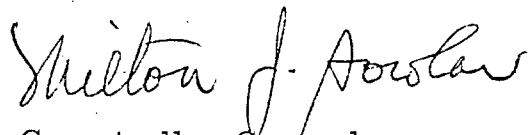
We believe this to be an accurate summary of the Commission's responsibility regarding claims under sections 1401-1416, except that, while it is not entirely clear, it appears that under section 1401 the \$50,000 jurisdictional limit is not applied to the amount of the settlement but to the amount of the claim. That is, the Commission may not entertain a section 1401 claim for more than \$50,000, even if it could settle the claim for less than \$50,000. This reading is consistent with the analogous \$120,000 limitations in sections 1412 and 1415, which provide that the Commission may not adjust and pay claims under those sections where the amount of the claim exceeds \$120,000.

The Administrator says that the Commission "may settle and pay those claims based on sections 1401, 1411, and 1412 of Public Law 96-70, but that all others will be subject to the provisions of 28 U.S.C. § 2414 concerning compromise and payment." As discussed above, section 2414 has no application to administrative settlement of claims. The question remains therefore, how claims for injury to persons or property which cannot be settled by the Commission are to be handled.

For those claims outside the monetary limitation in section 1412 on the Commission's settlement authority, this is resolved by section 1415.

Claims under section 1412 for damages to vessels outside the locks, if over \$120,000, are to be referred to the Congress with the Commission's recommendation.

Claims under section 1401 for property damage, personal injury, or death for more than \$50,000 are not otherwise provided for in the Act. Claimants would presumably have to petition the Congress for legislation authorizing payment. The same would be true of claims which are of a type not covered by sections 1401, 1411, or 1412. We are aware of no other mechanism by which such claims, not provided for in Public Law 96-70, can be settled and paid.



Acting Comptroller General
of the United States